

SERVICE DATE – FEBRUARY 4, 2005

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 422X)

BNSF RAILWAY COMPANY¹
–ABANDONMENT EXEMPTION–
IN SNOHOMISH COUNTY WA

Decided: February 3, 2005

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon and discontinue service over a 0.99-mile line of railroad between milepost 38.01 and milepost 39.00 in Snohomish, Snohomish County, WA. Notice of the exemption was served and published in the Federal Register on July 2, 2004 (69 FR 40470-71).

By decision and notice of interim trail use or abandonment (NITU) served August 3, 2004, the proceeding was reopened and a 180-day period was authorized for the City of Snohomish (City) to negotiate an interim trail use/rail banking agreement with BNSF for the entire line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiation period under the NITU was scheduled to expire on January 31, 2005.²

On January 31, 2005, the City filed a request for an extension of the negotiating period for 90 days, until May 1, 2005. In a response filed by facsimile on the same day, BNSF concurs with the request to extend the trail use negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of the negotiating period will

¹ Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

² The August 3, 2004 decision also imposed a public use condition, which expired on January 31, 2005, and several environmental conditions, which remain in effect.

promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended to May 1, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The City's request to extend the NITU negotiation period is granted.
2. The negotiating period under the NITU is extended to May 1, 2005.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary